

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

GEORGE LANE, MICHAEL P. SHAW AND  
PUGET SOUND SURFACERS, INC.,

Petitioners,

v.

CLALLAM COUNTY,

Respondent.

**Case No. 18-2-0006**

**FINAL DECISION AND ORDER**

**SYNOPSIS**

*George Lane, Michael P. Shaw and Puget Sound Surfacers, Inc. (Petitioners) challenged Resolution No. 82, 2018 (hereinafter Res. 82 or Resolution) adopted by Clallam County (County). The Board concluded that the County's actions leading to the adoption of Res. 82 violated the public participation requirements of the Growth Management Act and remanded the matter.*

**I. INTRODUCTION**

Procedural matters relevant to the case are detailed in Appendix A.

Legal issues raised in the case are set forth in Appendix B.

**II. BOARD JURISDICTION**

The Board finds the Petition for Review was timely filed,<sup>1</sup> that Petitioners have standing to appear before the Board,<sup>2</sup> and that the Board has jurisdiction to review the

<sup>1</sup> RCW 36.70A.290(2).

<sup>2</sup> RCW 36.70A.280.

1 issues stated in the Petition for compliance with the Growth Management Act (GMA).<sup>3</sup>

### 3 III. STANDARD OF REVIEW

4 Comprehensive plans and development regulations, and amendments to them, are  
5 presumed valid upon adoption.<sup>4</sup> This presumption creates a high threshold as the burden is  
6 on the Petitioners to demonstrate that any action taken by the County is not in compliance  
7 with the Growth Management Act (GMA).<sup>5</sup> The Board is charged with adjudicating GMA  
8 compliance and, when necessary, invalidating noncompliant plans and development  
9 regulations.<sup>6</sup>

10  
11 The scope of the Board's review is limited to determining whether a city or county has  
12 achieved compliance with the GMA only with respect to those issues presented in a timely  
13 petition for review.<sup>7</sup> The Board is directed to find compliance unless it determines that the  
14 challenged action is clearly erroneous in view of the entire record before the Board and in  
15 light of the goals and requirements of the GMA.<sup>8</sup>

### 17 IV. ISSUES

18 The Amended Prehearing Order<sup>9</sup> set forth issues asserting that the County's Res. 82  
19 violated certain goals and requirements of the GMA.<sup>10</sup> While the issue statements are set  
20 out in full in Appendix B, the issues relevant to this decision are the following:  
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23 <sup>3</sup> RCW 36.70A.280(1).

24 <sup>4</sup> RCW 36.70A.320(1).

25 <sup>5</sup> RCW 36.70A.320(2).

26 <sup>6</sup> RCW 36.70A.280, RCW 36.70A.302.

27 <sup>7</sup> RCW 36.70A.290(1).

28 <sup>8</sup> RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the  
firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201  
(1993).

29 <sup>9</sup> Amended Prehearing Order dated November 28, 2018. The parties stipulated to the wording of the issue  
statements. See Stipulation Re: Restatement of Issues, filed November 27, 2018.

30 <sup>10</sup> The parties also stipulated that: "The parties agree that the Western Washington Growth Management  
31 Hearings Board does not have subject matter jurisdiction over the constitutional claims and issues. The parties  
32 further agree that the constitutional claims and issues raised herein are pled to preserve them for appeal."  
See Stipulation Re: Constitutional Claims and Issues, filed November 6, 2018.

1 Issue No. 1: Violations of GMA Notice and Public Participation Requirements.

2 Did Clallam County fail to provide with respect to Resolution No. 82 (the  
3 Comprehensive Plan Update) the “early and continuous” and “meaningful”  
4 participation of the public, stakeholders and other interested parties required by RCW  
5 36.70A.035(1)(a)-(e), RCW 36.70A.130(2) and RCW 36.70A.140; CCC 31.01.500;  
6 and/or WAC 365-196-600(1)(a)(b), (2)(a)(b), (3)(a)-(c), (4)(5)(8)(a)(c); WAC 365-196-  
7 600(3)(c)(4)(5)(6)(a)(b)(i) -(iv) (8); WAC 365-196-610(2)(a)(i)?

8 Issue No. 2: Violations of GMA Requirements for Public Notice/ Comment and Non-  
9 Participation of Planning Commission.

10 Did the adoption process for Resolution No. 82 violate GMA provisions set out in  
11 RCW 36.70A.035(1)(a)-(e); RCW 36.70A.130; RCW 36.70A.140; CCC 31.01.500;  
12 and/or WAC 365-196-600(1)(a)(b), (3)(a)-(c),(5)(6)(a)(b)(i)-(iv), (7)(c); WAC 365-196-  
13 610(2)(a)(i); CCC 26.01.05(1)(2); WAC 365-196-600(7)(8) and WAC 365-196-  
14 600(8)(a)?

15 **V. ANALYSIS AND DISCUSSION**

16 The Petitioners challenge Clallam County’s passage of Res. 82 which “Affirmed  
17 Completion” of the periodic review and evaluation of the County’s comprehensive plan and  
18 implementing development regulations mandated by RCW 36.70A.130.<sup>11</sup> The Petitioners  
19 specifically focus on that portion of the review and evaluation required by RCW 36.70A.131  
20 to “review its mineral resource lands [MRL] designations adopted pursuant to RCW  
21 36.70A.170 and mineral resource lands development regulations adopted pursuant to RCW  
22 36.70A.040 and 36.70A.060.” In addition, the issue statements allege significant violations  
23 of GMA notice and public participation requirements, a lack of compliance with application of  
24 best available science (BAS), and inconsistencies within the County’s Comprehensive Plan  
25 as well as inconsistencies between the Plan and its implementing development regulations.  
26

27 RCW 36.70A.130 provides in pertinent part as follows:  
28

29 (1)(a) Each comprehensive land use plan and development regulations shall  
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31  
32 <sup>11</sup> See the title of Resolution 82.

1 be subject to continuing review and evaluation by the county or city that  
2 adopted them. Except as otherwise provided, a county or city shall take  
3 legislative action to review and, if needed, revise its comprehensive land use  
4 plan and development regulations to ensure the plan and regulations comply  
5 with the requirements of this chapter according to the deadlines in subsections  
6 (4) and (5) of this section.

7 (b) . . . Legislative action means the adoption of a resolution or ordinance  
8 following notice and a public hearing indicating at a minimum, a finding that a  
9 review and evaluation has occurred and identifying the revisions made, or that  
10 a revision was not needed and the reasons therefor.

11 (d) Any amendment of or revision to a comprehensive land use plan shall  
12 conform to this chapter. Any amendment of or revision to development  
13 regulations shall be consistent with and implement the comprehensive plan.

14 (2)(a) Each county and city shall establish and broadly disseminate to the  
15 public a public participation program consistent with RCW 36.70A.035 and  
16 36.70A.140 that identifies procedures and schedules whereby updates,  
17 proposed amendments, or revisions of the comprehensive plan are considered  
18 by the governing body of the county or city no more frequently than once every  
19 year . . . (emphasis added.)

20 The terms "Update" or "Update Process" are often used to refer to the RCW  
21 36.70A.130 "review and, if needed, revise" requirement. The update process provides the  
22 vehicle for bringing plans into compliance with recently enacted chapter 36.70A RCW  
23 (GMA) requirements and for recognizing changes in population growth.<sup>12</sup> For most  
24 jurisdictions, the update is now required to be undertaken every eight years.<sup>13</sup> The update  
25 process must also incorporate the review required by RCW 36.70A.131, a GMA section  
26 adopted in 1998.

27 RCW 36.70A.131

28 Mineral resource lands—Review of related designations and development regulations.

29 As part of the review required by RCW 36.70A.130(1), a county or city shall  
30

31 <sup>12</sup> *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378, 390 (2007).

32 <sup>13</sup> RCW 36.70A.130(5).

1 review its mineral resource lands designations adopted pursuant to RCW  
2 36.70A.170<sup>14</sup> and mineral resource lands development regulations adopted  
3 pursuant to RCW 36.70A.040<sup>15</sup> and 36.70A.060<sup>16</sup>. In its review, the county or  
4 city shall take into consideration:

5 (1) New information made available since the adoption or last review of  
6 its designations or development regulations, including data available from the  
7 department of natural resources relating to mineral resource deposits; and

8 (2) New or modified model development regulations for mineral  
9 resource lands prepared by the department of natural resources, the  
10 department of community, trade, and economic development [now the  
11 Department of Commerce], or the Washington state association of counties.

## 12 **Comprehensive Plan Updates**

13 The RCW 36.70A.130 and RCW 36.70A.131 review and evaluation processes  
14 require inclusion of public participation. It is incumbent upon the jurisdiction "to establish and  
15 broadly disseminate a public participation program consistent with RCW 36.70A.035 and  
16 RCW 36.70A.140 that identifies procedures and schedules whereby updates . . . are  
17 considered . . ."<sup>17</sup>

18 RCW 36.70A.020(11), one of the GMA planning goals, which are designed to guide  
19 the development and adoption of comprehensive plans and development regulations,  
20 states:

21 Citizen participation and coordination. *Encourage the involvement of citizens in the*  
22 *planning process* and ensure coordination between communities and jurisdictions to  
23 reconcile conflicts. (emphasis added.)

24 <sup>14</sup> RCW 36.70A.170, in part: (1) On or before September 1, 1991, each county, and each city, shall designate  
25 where appropriate. . .

26 (c) Mineral resource lands that are not already characterized by urban growth and that have long-term  
27 significance for the extraction of minerals; and

28 (2) In making the designations required by this section, counties and cities shall consider the  
29 guidelines established pursuant to RCW 36.70A.050.

30 <sup>15</sup> RCW 36.70A.040, in part, required Clallam County to adopt countywide planning policies, designate natural  
31 resource lands and critical areas, designate urban growth areas, and adopt a comprehensive plan and  
32 implementing development regulations.

<sup>16</sup> RCW 36.70A.060, in part: (1)(a) Each county that is required or chooses to plan under RCW 36.70A.040,  
and each city within such county, shall adopt development regulations on or before September 1, 1991, to  
assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

<sup>17</sup> RCW 36.70A.130(2)(a).

1 RCW 36.70A.140 emphasizes the requirements for public participation and the  
2 contents of a public participation program. It directs local jurisdictions to provide early and  
3 continuous public participation.

4 Each county and city that is required or chooses to plan under RCW  
5 36.70A.040<sup>18</sup> shall establish and broadly disseminate to the public a public  
6 participation program identifying procedures providing for early and continuous  
7 public participation in the development and amendment of comprehensive land  
8 use plans and development regulations implementing such plans. The  
9 procedures shall provide for broad dissemination of proposals and  
10 alternatives, opportunity for written comments, public meetings after effective  
11 notice, provision for open discussion, communication programs, information  
12 services, and consideration of and response to public comments. (RCW  
13 36.70A.140 in part)

14 “Public participation is part of the development process preceding adoption,  
15 continues after adoption through the development of amendments, and again  
16 precedes adoption of amendments. This early and continuous public  
17 participation process applies to comprehensive plans *and* development  
18 regulations, as well as, *both* the initial development and adoption *and*  
19 amendment of such plans and development regulations.”<sup>19</sup> (Emphasis in  
20 original.)

21 RCW 36.70A.035 clarifies that public notice is an essential and necessary part of the  
22 public participation requirement and sets out various methods to provide public notice:

23 (1) The public participation requirements of this chapter shall include notice  
24 procedures that are reasonably calculated to provide notice to property owners  
25 and other affected and interested individuals, tribes, government agencies,  
26 businesses, school districts, group A public water systems required to develop  
27 water system plans consistent with state board of health rules adopted under  
28 RCW 43.20.050, and organizations of proposed amendments to  
29 comprehensive plans and development regulation. Examples of reasonable  
30 notice provisions include:

- 31 (a) Posting the property for site-specific proposals;  
32 (b) Publishing notice in a newspaper of general circulation in the county,  
city, or general area where the proposal is located or that will be affected by  
the proposal;

<sup>18</sup> Clallam County was required to plan under RCW 36.70A.040.

<sup>19</sup> *McVittie v. Snohomish County*, GMHB No. 00-3-0016 (Final Decision and Order (FDO), April 12, 2001).

1 (c) Notifying public or private groups with known interest in a certain  
2 proposal or in the type of proposal being considered;

3 (d) Placing notices in appropriate regional, neighborhood, ethnic, or  
4 trade journals; and

5 (e) Publishing notice in agency newsletters or sending notice to agency  
6 mailing lists, including general lists or lists for specific proposals or subject  
7 areas. (in part.)

8 As the Central Board stated long ago:

9 It is axiomatic that without effective notice, the public does not have a  
10 reasonable opportunity to participate, therefore, the Act requires local  
11 jurisdictions' notice procedures to be "reasonably calculated to provide notice .  
12 . ."<sup>20</sup>

13 The Department of Commerce regulations further emphasize the GMA public  
14 participation and notice requirements. See WAC 365-196-600. As WAC 365-196-010(1)(c)  
15 states, a major feature of the GMA is "The concept that the process should be a 'bottom up'  
16 effort, involving early and continuous public participation, with the central locus of decision-  
17 making at the local level, bounded by the goals and requirements of the act". A "bottom up"  
18 effort requires involvement of the general public. To achieve that involvement it is incumbent  
19 upon the jurisdiction when undertaking a RCW 36.70A.130 and .131 update process to  
20 broadly disseminate notice of the review, a schedule for the update process, identification of  
21 the scope of the review, and notice of the opportunities of when to comment.<sup>21</sup>

22 With that background, the analysis turns to the actions of the County leading up to its  
23 adoption of Res. 82. First of all, the Resolution included no comprehensive plan or  
24 development regulation amendments. Rather, it referenced numerous comprehensive plan  
25 and development regulation amendments adopted since the County's prior RCW  
26 36.70A.130 update process in 2007.<sup>22</sup> The Resolution concluded with the statements that  
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30 <sup>20</sup> *Rural Bainbridge Island/Andrus v. City of Bainbridge Island*, CPSGMHB No. 98-3-0030 (FDO, March 31,  
31 1999) at 6-7. See also, *Weyerhaeuser Real Estate Company, Land Management Division v. City of DuPont*,  
CPSGMHB No. 98-3-0035 (FDO, May 19, 1999) at 6.

32 <sup>21</sup> WAC 365-196-610.

<sup>22</sup> Resolution at 1, ¶ 6 and Attachment A.

1 the County had completed its update process and that its Comprehensive Plan and  
2 development regulations, as amended during the prior 11 years, met GMA requirements.<sup>23</sup>  
3 The Resolution further stated that “. . . this review was not intended to reevaluate or amend  
4 the current overall direction of the comprehensive plan (e.g., vision, policies) and  
5 development regulations (e.g., zoning) nor to identify changes to clarify or streamline  
6 policies or regulations.”<sup>24</sup> While revisions of the comprehensive plan vision and policies, as  
7 well as its implementing development regulations, would not necessarily be required, the  
8 statement reflects what appears to have been a predetermination by County staff and policy  
9 makers as opposed to a conclusion reached following an open public process. That  
10 observation is buttressed by a further statement in the Resolution: “The County will initiate in  
11 2019, and complete in 2020, a countywide public process to re-evaluate current  
12 comprehensive plan vision and related policies and update the plan, as needed.”<sup>25</sup>  
13

14 Similarly, County Planning Manager Steve Gray stated: “So we weren't at this point  
15 reevaluating or amending the current version of the plan or zoning controls . . . Although we  
16 made many changes since our original growth management plans in 1995, it's probably time  
17 to sit back and reengage throughout the County making sure our plan still is meeting our - -  
18 our local visions, so starting that visioning process and taking it from there in terms of where  
19 we might want to update the - - update the plan.”<sup>26</sup> The logical conclusion to be drawn is  
20 that the County opted to defer commencing a GMA compliant update process to 2019/2020.  
21

22 Nor does it appear from the record that the County adopted a public participation  
23 program for this update process. The only reference to such a program in the record  
24 apparently cites actions taken during the 2007 comprehensive plan update process  
25 including reaching “out to citizens and landowners through various means to ensure that  
26 proposals and alternatives reach all affected parties”, public workshops and neighborhood  
27  
28  
29

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30 <sup>23</sup> Resolution at 14.

31 <sup>24</sup> *Id.* at 15.

32 <sup>25</sup> *Id.*

<sup>26</sup> Ex. 5, Transcript of Commissioner's Board Meeting (BOCC) at 19-20 (August 7, 2008).



1 meetings, notice through various news media, brochures, and a newsletter."<sup>27</sup>

2 Finally, the record fails to show that the update process involved "early and  
3 continuous" public involvement. Again, a review of the record fails to disclose any early  
4 notice that the County was undertaking an update process. The only public notices<sup>28</sup>  
5 included one published on July 27, 2018, stating that on August 7, 2018, the Clallam County  
6 Board of Commissioners would hold a public hearing "to consider a Resolution affirming the  
7 County's completion of the state mandated periodic review and update required under RCW  
8 36.70A.130" and a County website reference to consideration of the Resolution.<sup>29</sup> The  
9 Resolution appears to have been a *fait accompli* at that point in time, a few weeks prior to  
10 final adoption.  
11

12 On the day Res. 82 was adopted, the County Planning Manager stated in response  
13 to a County Commissioner's question regarding whether or not the County had met the  
14 public participation requirements: "... Our public process is essentially this hearing, and then  
15 whatever we've heard or what the Board's heard during your normal public comment  
16 periods."<sup>30</sup>  
17

18 In a similar vein, counsel for the County responded to a Board member's question at  
19 the Hearing on the Merits:

20 MS. CARTER: ...getting back to the main complaint by the petitioners about  
21 public process, public involvement. In 2007, it seemed like there was a lot of  
22 public involvement, workshops, meetings around the county. Why was this  
23 2018 update so different? It seems like it was focused on the Carlsborg UGA,  
24 critical areas ordinance update, and then sort of quickly at the end everything  
25 else in Resolution 82.

26 MR. ALVAREZ: Well, I guess one reason would be that we were doing an  
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28 <sup>27</sup> Clallam County Comprehensive Plan, Section 31.01.500, attached as *Ex. C* to the Petition for Review.

29 <sup>28</sup> The record does include agendas and minutes of staff presentations to the Planning Commission regarding  
30 the update process (*Exs. 72, 71, 60, 58, and 38*). There is no indication in the record of prior notice to the  
31 public that the update process was ongoing nor apparent opportunity for public comment on same. The record  
32 also includes a transcript of a BOCC work session (*Ex. 160*) at which staff and the BOCC engaged in  
discussion of mineral resource lands, their designation and applicable regulations.

<sup>29</sup> *Ex. 10* and *Ex. 19*.

<sup>30</sup> *Ex. 5*, Transcript of BOCC public hearing at 75, 76 (August 7, 2018).

1 update on the Shoreline Master Program. I think that was just a matter of  
2 resources.<sup>31</sup>

### 3 Mineral Resource Lands Review

4 Having provided that extensive background regarding the RCW 36.70A.130 "review  
5 and revise, if needed" process, it must be clarified that the Petitioners have not challenged  
6 the entirety of the RCW 36.70A.130 update process. Their challenge is limited to the alleged  
7 failure to comply with the related review required by RCW 36.70A.131.  
8

9 RCW 36.70A.131 provides as follows:

10 As part of the review required by RCW 36.70A.130(1), a county or city shall  
11 review its mineral resource lands designations adopted pursuant to RCW  
12 36.70A.170 and mineral resource lands development regulations adopted  
13 pursuant to RCW 36.70A.040 and 36.70A.060. In its review, the county or city  
14 shall take into consideration:

15 (1) New information made available since the adoption or last review of  
16 its designations or development regulations, including data available from the  
17 department of natural resources relating to mineral resource deposits; and

18 (2) New or modified model development regulations for mineral  
19 resource lands prepared by the department of natural resources, the  
20 \*department of community, trade, and economic development, or the  
21 Washington state association of counties. (emphasis added.)

22 RCW 36.70A.131 was a 1998 GMA amendment. The County first designated its MRL  
23 in 1995.<sup>32</sup> The record does not reflect that the County has employed a public process to  
24 review its mineral resource land designations and its mineral resource lands development  
25 regulations since they were first designated, notwithstanding the 1998 adoption of RCW  
26 36.70A.131.<sup>33</sup> In fact, the County had committed to such a review in 2007 but apparently  
27

28 <sup>31</sup> Hearing on the Merits Transcript (HOM) February 27, 2019, at 89, 90.

29 <sup>32</sup> Ex. 160, Transcript of BOCC Work Session at 4-6 (April 9, 2018).

30 <sup>33</sup> See Ex. 160 at 8, 9 where Mr. Gray responded to a Commissioner's question: Chair Ozias-"Since we initially  
31 adopted and identified the lands that are appropriate for mineral resource have we ever-has there been any  
32 review or any new information or anything that's caused us to update that plan?" Mr. Gray: "We have-the last  
periodic review we-we looked at the maps. We didn't make any-the County did not make any significant  
changes. I think one thing we probably need to do-I expect there's better geologic maps from the Department  
of Natural Resources than what we used in the mid-1990s. . . . So I think we-we certainly need to look at any

1 failed to follow through.<sup>34</sup> Furthermore, all of the GMA public participation and notice  
2 requirements apply equally to the RCW 36.70A.131 MRL review.<sup>35</sup>

3 As previously stated, the review and evaluation process for MRL is similarly subject  
4 to the public participation requirements of the GMA. That public process must precede the  
5 legislative process to adopt amendments of same, or a determination that no amendments  
6 are required. It is clearly evident that the County's RCW 36.70A.131 review did not include a  
7 public participation program, public notice, or early and continuous public participation.  
8 Merely because the Petitioners provided comment does not satisfy the myriad GMA public  
9 participation requirements.<sup>36</sup>

10  
11 The Petitioners' Pre-Hearing Brief quoted from an earlier Western Board decision  
12 involving Clallam County, a quote that is directly relevant in this case:

13 The update requirement is also important as a means for the citizenry to take  
14 part in land use decision-making. One of the hallmark provisions of the GMA is  
15 its insistence on the opportunity for the public to participate in land use  
16 planning decisions on an "early and continuous" basis. . . . The update  
17 process gives citizens new to the planning process in their communities the  
18 ability to familiarize themselves with their community's plans and the goals and  
19 requirements of the GMA. After all, it is those who participate in the local  
20 planning process who assure that local plans and development regulations  
21 comply with the GMA, because they are the ones who can initiate an appeal.  
The update requirement thus is also important in providing the opportunity for

22 new map information to make sure at least are assumptions of commercial forest land in particular are still  
23 valid."

24 <sup>34</sup> See *Ex. 104*, Clallam County Resolution 77, 2007, at 12 where it states: "DNR has pointed out that, based  
25 on updated information, the County's mineral overlay map includes unnecessarily large areas designated as  
26 mineral lands. Because the County's mineral map is over-inclusive, rather than under-inclusive, the County  
finds that the map complies with GMA. Nonetheless, Clallam County will review and include possible re-  
27 delineation of mineral lands on the comprehensive plan map for the 2007 annual comprehensive plan update."  
(emphasis added.)

28 <sup>35</sup> See HOM at 79. Board Member Carter asked whether or not the County notified mineral resource lands  
29 advocates regarding the update process. Counsel for the County Alvarez stated "I don't think there was, no." "I  
30 think the County has to concede that that was not done in that method. I think the reason for that would be that  
31 – one possible reason for that would be that there was going to be no change and this was not a controversial  
32 resolution because all the controversies had been solved."

33 <sup>36</sup> As this Board stated in *Panesko v. Lewis County*, WWGMHB No. 00-2-0031c (FDO, March 5, 2001) at 9 " .  
34 . . . a 'don't tell, won't attend' policy fails to comply with the Act because of unknown citizens who would have  
35 participated with proper reasonable notice." Citing *Moore-Clark v. Town of La Conner*, WWGMHB No. 94-2-  
0021 (May 11, 1995).

1 citizens to bring new data, information, and best available science required for  
2 the development of plans and regulations to the attention of local decision-  
3 makers, In [sic] this way, the update requirement balances the desire for  
4 predictability of land use decisions with the ability of the public to participate on  
5 a periodic basis in ensuring that State goals and objectives for growth apply  
6 locally.<sup>37</sup>

7 The Board finds and concludes in regards to Issues 1 and 2 that the process Clallam  
8 County employed in conducting the RCW 36.70A.131 MRL review violated RCW  
9 36.70A.035, RCW 36.70A.140, RCW 36.70A.130 and was not guided by RCW  
10 36.70A.020(11).

### 11 **Public Participation Failure**

12 A failure of public participation requires a finding of noncompliance and remand of  
13 the matter without addressing the substance of the jurisdiction's actions as challenged by  
14 the Petitioners.<sup>38</sup>

15 The bedrock of GMA planning is public participation. The GMA's public  
16 participation provisions require cities and counties to adopt specific procedures  
17 ...Thus, a jurisdiction's failure to follow the public participation procedures . . .  
18 constitutes non-compliance with [the GMA].<sup>39</sup>

21 <sup>37</sup> *Dry Creek Coalition and Futurewise v. Clallam County*, WWGMHB No. 07-2-0018c (Order Denying County's  
22 Motion to Dismiss Issue 2, January 10, 2008) at 6. See also *McVittie v. Snohomish County*, CPSGMHB No.  
23 00-3-0016 (FDO, April 12, 2001) at 28, 29, where the Board stated: To inappropriately truncate or eliminate  
24 the public's opportunity to participate in the making of local government policy would fly in the face of one of  
25 the Act's most cherished planning goals and separate the "bottom up" component of GMA planning from its  
26 true roots - the people.

27 <sup>38</sup> An acknowledged failure of public participation in adopting an ordinance directs that a finding of  
28 noncompliance and a remand be made without addressing the substance of the ordinance. Since the public  
29 participation issue disposes of the case, addressing the other issues would violate RCW 36.70A.290(1)  
30 concerning advisory opinions. *FOSC v. Skagit County*, WWGMHB No. 98-2-0007 (Finding of Noncompliance  
31 and Order of Remand, August 13, 1998). Where significant flaws in public participation are found, a GMHB will  
32 not address the substantive compliance issue of the ordinance in question. *Achen, et al. v. Clark County, et al.*, WWGMHB No. 95-2-0067 (Compliance Order, October 1, 1996).

<sup>39</sup> *TRD, et al. v. City of Black Diamond*, GMHB No. 10-3-0014 (Order on Motions, February 15, 2011) at 24,  
citing *Petso v. City of Edmonds*, CPSGMHB No. 09-3-0005 (FDO, August 17, 2009) (Finding failing to provide  
adequate notice resulted in remand to the city for compliance); *Kelly, et al v. Snohomish County*, CPSGMHB  
No. 97-3-0012c (FDO, July 30, 1997) (Remanded ordinance due to failure to comply with public participation  
requirements as to notice); *Laurelhurst Community Club, et al. v. City of Seattle, et al.*, CPSGMHB No. 03-3-

1 The public participation violation disposes of the case. Addressing the remaining  
2 issues raised by the Petitioners would violate RCW 36.70A.290(1) concerning advisory  
3 opinions.<sup>40</sup>

#### 5 CRITICAL OBSERVATIONS

6 An additional portion of the quote from this Board's decision in *Dry Creek Coalition*  
7 stated:

8 By requiring periodic updates, RCW 36.70A.130(1) and (4) calls on counties  
9 and cities to incorporate legal changes and other changes as well - changes  
10 based on new information, new data, new planning and management  
11 practices, changing community conditions, and new science. The updates also  
12 encourage cities and counties and their citizens to evaluate the vision and  
13 direction encompassed in their plans, determine if their approach is working,  
14 and change direction if needed.<sup>41</sup> (emphasis added.)

15 That need to consider changes in the law, applicable regulations, and new information is  
16 imperative. The record establishes that there have been but very minor changes to the  
17 County's MRL designations since 1995.<sup>42</sup> Since then, RCW 36.70A.131 was adopted and  
18 the Minimum Guidelines applicable to natural resource lands, including MRL, were  
19 extensively amended in 2010. The record also discloses "new information" including the fact  
20 that since the County's initial designation of its MRL nearly 200,000 acres of designated  
21

22  
23  
24 0016 (FDO, March 3, 2004) (Remanding ordinance for failure to adhere to GMA public participation  
25 requirements). See also: *The McNaughton Group. LLC. v. Snohomish County, et al.*, CPSGMHB No. 06-3-  
26 0027 (FDO, January 29, 2007) at 22; *McVittie v. Snohomish County*, CPSGMHB No. 00-3-0016 (FDO, April  
27 12, 2001) at 16-25; *Fallgatter, et al. v. City of Sultan*, CPSGMHB No. 06-3-0017 (Order on Motions, June 29,  
2006) at 4.

28 <sup>40</sup> *FOSC v. Skagit County*, WWGMHB No. 98-2-0007 (Finding of Noncompliance and Order of Remand,  
29 August 13, 1998). See also *Neighborhood Alliance, et al v. Spokane County et al.*, GMHB No. 13-1-0006c  
30 (Order on Dispositive Motion, November 26, 2013) at 15; *Servais, et al. v. Bellingham, et al.*, WWGMHB No.  
31 00-2-0020 (FDO, October 26, 2000); *Achen, et al. v. Clark County, et al.* WWGMHB No. 95-2-0067c  
(Compliance Order, October 1, 1996) at 16-17.

32 <sup>41</sup> *DCC, et al. v. Clallam County*, WWGMHB No. 07-2-0018c (Order Denying County's Motion to Dismiss Issue  
2, January 10, 2008) at 5.

<sup>42</sup> Transcript of staff presentation to BOCC at 5 and 8 (April 9, 2018).

1 MRL are no longer accessible.<sup>43</sup> The Department of Natural Resources questioned the  
2 County's MRL designations in a letter dated July 24, 2002, in which it was stated that "It  
3 appears that an unnecessarily large part of the County is currently mapped as potential  
4 mineral resource." Other concerns regarding the County's MRL designations, or lack of  
5 same, were also raised in that letter.<sup>44</sup>

6 The Board believes that it is also important to address an issue raised by the County  
7 where it was suggested that the chapter 365-190 WAC Minimum Guidelines' regulations  
8 were possibly optional.<sup>45</sup> That is not the case. It is imperative that the County address the  
9 Minimum Guidelines of chapter 365-190 WAC, adopted pursuant to RCW 36.70A.050.<sup>46</sup> As  
10 this Board stated in *Weyerhaeuser*:

11  
12 . . . however, mere consideration while disregarding the guidelines would  
13 render the legislation meaningless. RCW 36.70A.050 states the guidelines are  
14 to be the minimum applicable to all jurisdictions and that the CTED/Commerce  
15 developed guidelines are to allow for regional differences. The Board assumes  
16  
17

18  
19 <sup>43</sup> Transcript of BOCC Public Hearing at 44, 45 (August 7, 2018). Transcript of staff presentation to BOCC at 5  
(April 9, 2018).

20 <sup>44</sup> Attached as A-2 to the Petitioners' Pre-Hearing Brief.

21 <sup>45</sup> Prehearing Brief on Behalf of Respondent Clallam County at 12, 13.

22 <sup>46</sup> RCW 36.70A.050(1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt  
23 guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a)  
24 Agricultural lands; (b) forestlands; (c) mineral resource lands; and (d) critical areas. The department shall  
25 consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural  
26 resources regarding forestlands and mineral resource lands, and the department of ecology regarding critical  
27 areas.

28 (2) In carrying out its duties under this section, the department shall consult with interested parties,  
29 including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of  
30 developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forestlands, and  
31 mining lands; (f) representatives of local economic development officials; (g) representatives of environmental  
32 organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal  
and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this  
subsection, the department shall conduct public hearings in the various regions of the state. The department  
shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all  
jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these  
guidelines is to assist counties and cities in designating the classification of agricultural lands, forestlands,  
mineral resource lands, and critical areas under RCW 36.70A.170. (emphasis added.)

1 the Guidelines take regional differences into account as directed.<sup>47</sup>

2 However, based on the foregoing analysis, the Board concludes, in light of the  
3 *Manke* and *Lewis County* decisions, that RCW 36.70A.170(2) and RCW  
4 36.70A.050 must be read to require jurisdictions to follow the Minimum  
5 Guidelines' MRL requirements. Jurisdictions have the flexibility to assign  
6 varying weight to the factors related to long term commercial significance  
7 included in RCW 36.70A.030 and the applicable Guidelines. Jurisdictions also  
8 have the discretion to depart from other portions of the Guidelines which are  
9 merely suggestions, provided the departure provide comparable benefit. That  
10 freedom, however, does not extend to deviating from those portions of the  
11 Minimum Guidelines which are requirements.<sup>48</sup>

## 12 VI. ORDER

13 Based upon review of the Amended Petition for Review, the issue statements, the  
14 briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law,  
15 having considered the arguments of the parties, and having deliberated on the matter, the  
16 Board finds and concludes that the Petitioners have met their burden of proof to establish  
17 that Respondent Clallam County's process leading to the adoption of Resolution 82 violated  
18 RCW 36.70A.035, RCW 36.70A.140, RCW 36.70A.130 and was not guided by RCW  
19 36.70A.020(11), all as set forth above. The Board has a firm and definite belief that a  
20 mistake has been made. The process which led to the adoption of Resolution 82 was clearly  
21 erroneous in view of the entire record before the Board and in light of the goals and  
22 requirements of the Growth Management Act.

23 The Board remands this matter for compliance according to the following schedule:

24 Item	25 Date Due
26 Compliance Due	27 October 8, 2019
28 Compliance Report/Statement of Actions Taken to 29 Comply and Index to Compliance Record	October 22, 2019

30 <sup>47</sup> *Weyerhaeuser, et al. v. Thurston County*, GMHB No. 10-2-0020c (Compliance Order, July 17, 2012) at 15.  
31 See also the Court's conclusions in *Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 804-805 (1998) and *Lewis  
County v. Hearings Board*, 157 Wn.2d 488 (2006).

32 <sup>48</sup> *Weyerhaeuser* at 23, 24.

1	Objections to a Finding of Compliance	November 5, 2019
2	Response to Objections	November 15, 2019
3	<b>Telephonic Compliance Hearing</b>	<b>November 21, 2019</b>
4	1 (800) 704-9804 and use pin code 7757643#	<b>10:00 a.m.</b>

5  
6 SO ORDERED this 8<sup>th</sup> day of April 2019.

7  
8 \_\_\_\_\_  
William Roehl, Board Member

9  
10 \_\_\_\_\_  
Nina Carter, Board Member

11  
12 \_\_\_\_\_  
Bill Hinkle, Board Member

13  
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16  
17 **Note: This is a final decision and order of the Growth Management Hearings Board**  
18 **issued pursuant to RCW 36.70A.300.<sup>49</sup>**  
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28 \_\_\_\_\_  
29 <sup>49</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
30 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved  
31 by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in  
32 RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the  
parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not  
authorized to provide legal advice.



## Appendix A: Procedural matters

On October 11, 2018, George Lane, Michael P. Shaw and Puget Sound Surfacers, Inc. (Petitioners) filed a Petition for Review. The petition was assigned Case No. 18-2-0006. An Amended Petition for Review was filed on October 17, 2018.

A prehearing conference was held telephonically on November 5, 2018. Petitioners appeared through their counsel, Dennis D. Reynolds. Respondent Clallam County appeared through its attorney, David Alvarez.

On January 8, 2019, the parties filed a Stipulation Regarding Additional Exhibit. That request was granted, admitting Exhibits 160, 5, and 12, by Order dated January 17, 2019.

Numerous motions were filed requesting supplementation of the record and requesting the Board to officially notice other documents. On January 31, 2019, the Board issued an order in which it took official notice of the following:

- 1) Mandatory Update: Guidebook: Keeping Your Comprehensive Plan and Development Regulations Current, 2016.
- 2) State Resources for the GMA Update of Comprehensive Plan and Development Regulations, 2016; Periodic Update Checklist for Counties, 2016.
- 3) Expanded Checklist for Comprehensive Plans.
- 4) Expanded Checklist for Development Regulations.
- 5) Designation of Mineral Resource Lands Under the Growth Management Act.
- 6) 1995 Clallam County Mineral Lands Map.
- 7) Selected portions of 1995 Clallam County Comprehensive Land Use Plan.

That order also provisionally allowed notice to be taken of a State of Washington DNR Website, "Aggregate Resources" and a US Geological Survey 2102 [sic] Minerals Yearbook, "Sand and Gravel, Construction", subject to clarification at the Hearing on the Merits of the specific facts included in the request. Clarification was provided and the Board agreed to

1 take notice of short references to those documents included in the Petitioners' Opening  
2 Brief. Similarly, the Board agreed at the HOM to take notice of portions of WASHINGTON  
3 GEOLOGY, a publication of the Washington State Department of Natural Resources, Volume  
4 22, No. 2 (July 1994) (This document was attached to Petitioners' Prehearing Brief as  
5 Appendix A-3).

6  
7 A February 13, 2019, request that the Board supplement the record with proposed  
8 Exhibit 164, a Declaration of Michael P. Shaw was denied. The Petitioners' request that the  
9 Board take official notice of Clallam County Ordinance No. 656,1998 was allowed. Order  
10 Denying Petitioners' Motion to Supplement the Record and Granting Request to Take  
11 Official Notice, February 14, 2019.

12 The County requested the Board supplement the record with Exhibits 161, 162, 163.  
13 The County's Motion to Supplement the Record was denied. The Board struck all  
14 references in the parties' briefs to the Petitioners' site specific MRL permit applications,  
15 including any related footnote citations or exhibits.<sup>50</sup> Order Denying Motion to Supplement  
16 the Record, February 14, 2019.

17  
18 At the Hearing on the Merits the Board agreed to take notice of a file containing the  
19 34 Clallam County mining sites on its Exhibits 24 and 26 from a DNR website as shown on  
20 Exhibits 24 and 26. It also allowed supplementation with proposed Exhibit 40, a list of  
21 "abandoned" mine sites. See transcript of HOM.

22  
23 The Briefs and exhibits of the parties were timely filed and are referenced in this  
24 order as follows:

- 25
- Petitioner's Prehearing Brief filed January 9, 2019.
  - County's Response Brief filed January 30, 2019.
  - Petitioner's Reply Brief filed February 13, 2019.
- 26  
27  
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31  
32 <sup>50</sup> The exhibits referencing site specific permit applications include *Ex. 116, 122, 147, 148, 152, 153, and*  
portions of 155.

1 Hearing on the Merits

2       The hearing on the merits was convened on February 27, 2019. The hearing afforded  
3 each party the opportunity to emphasize the most important facts and arguments relevant to  
4 its case. Board members asked questions seeking to thoroughly understand the history of  
5 the proceedings, the important facts, and the legal arguments of the parties. Presiding  
6 Officer Roehl was unable to attend the Hearing due to illness but reviewed the transcript.  
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## Appendix B: Legal Issues

Per the Amended Prehearing Order, legal Issues in this case were as follows:

### Issue No. 1: Violations of GMA Notice and Public Participation Requirements.

Did Clallam County fail to provide with respect to Resolution No. 82 (the Comprehensive Plan Update) the “early and continuous” and “meaningful” participation of the public, stakeholders and other interested parties required by RCW 36.70A.035(1)(a)-(e), RCW 36.70A.130(2) and RCW 36.70A.140; CCC 31.01.500; and/or WAC 365-196-600(1)(a)(b), (2)(a)(b), (3)(a)-(c), (4)(5)(8)(a)(c); WAC 365-196-600(3)(c)(4)(5)(6)(a)(b)(i) -(iv) (8); WAC 365-196-610(2)(a)(i)?

### Issue No. 2: Violations of GMA Requirements for Public Notice/ Comment and Non-Participation of Planning Commission.

Did the adoption process for Resolution No. 82 violate GMA provisions set out in RCW 36.70A.035(1)(a)-(e); RCW 36.70A.130; RCW 36.70A.140; CCC 31.01.500; and/or WAC 365-196-600(1)(a)(b), (3)(a)-(c), (5)(6)(a)(b)(i)-(iv), (7)(c); WAC 365-196-610(2)(a)(i); CCC 26.01.05(1)(2); WAC 365-196-600(7)(8) and WAC 365-196-600(8)(a)?

### Issue No. 3: Violations of GMA Update Standards.

Does Resolution No. 82 and the County’s mineral resource map, CCC 31.02.910, fail to comply with RCW 36.70A.131 and other directives of the Growth Management Act, RCW 36.70A.010, RCW 36.70A.020(11), (Coordinated Planning as implemented by RCW 36.70A.035; RCW 36.70A.030(1)); RCW 36.70A.030(10)(adequate designation of mineral resource lands of long-term significance); RCW 36.70A.140; RCW 36.70A.130(1),(4)(a); RCW 36.70A.170(2); RCW 36.70A.131(1)(c) (New Information); RCW 36.70A.020(8); RCW 36.70A.060(1)(a); RCW 36.70A.131(1); RCW 36.70A.170(1)(c); RCW 36.70A.470 (Continuing Obligations); and the guidelines established by RCW 36.70A.050: WAC 365-190-020; WAC 365-190-040 and 070 (minimum classification guidelines for mineral lands/critical area designations); WAC 365-190-040(3)(6)(7)(b); WAC 365-196-610(1) (d)(e)(i) (iii); WAC 365-190-070(3)(a)-(c); WAC 365-190-070(1)(2)(e)(3) (b)(c) (d) (i)-(v)(e) ((i)-(iii); and more specifically, WAC 365-190-040; and (6)(7)(b)(analysis of incompatible/conflicting uses); WAC 365-190-070(3)(b); WAC 365-190-070(3)(d)(v)(e)(i); WAC 365-190-070(2); WAC 365-190-020(7) and/or WAC 365-196-830(3)(5) relating to the extraction of mineral resources?

1 Issue No. 4: Failure To Account For Temporary Use/Qualitative Differences/ Reclamation  
2 Requirements/ Best Management Practices.

3 Are one or more of following Development Regulations applied to mining inconsistent  
4 with GMA standards, including RCW 36.70A.131 and/or implementing regulations  
5 WAC 365-190-070(4)(d), WAC 365-190-020(4), WAC 365-190-120(2), WAC 365-  
6 190-020(7), WAC 365-196-830, WAC 365-190-120(2), recognizing that mining is a  
7 temporary use, that functions and values of critical areas can be impacted on a short  
8 term basis or even lost if mitigation via site reclamation is ultimately imposed and  
9 encouraging use of best management practices to minimize impacts: CCC  
10 27.10.070; CCC 27.12.025(6); CCC 27.12.050(2); CCC 27.12.025(2) (Table 1); CCC  
11 27.12.400 to CCC 27.12.425; CCC 27.12.740; CCC 27.12.740(2)(a)(b); CCC 27.12.  
12 900 (Definition of "Major New Development"; CCC 27.12.740(RUE); CCC  
13 27.12.215(1) (Table 5); CCC 27.12.315(1) (Table 6); CCC 27.12.730; CCC  
14 27.12.710; CCC 27.12.715; CCC 27.12.900(definitions); CCC 27.12.840(2)(a);  
15 and/or CCC 27.12.600 to CCC 27.12.615?

16 Issue No. 5: Best Available Science.

17 Are one or more of following development regulations readopted by Resolution No.  
18 82 applied to mining inconsistent with GMA best available science requirements set  
19 out in RCW 36.70A.172: CCC 27.10.070; CCC 27.12.025(6); CCC 27.12.050(2);  
20 CCC 27.12.025(2) (Table 1); CCC 27.12.400 to CCC 27.12.425; CCC 27.12.740;  
21 CCC 27.12.740(2)(a)(b); CCC 27.12.900 (Definition of "Major New Development");  
22 CCC 27.12.740(RUE); CCC 27.12.215(1) (Table 5); CCC 27.12.315(1) (Table 6);  
23 CCC 27.12.730; CCC 27.12.710; CCC 27.12.715; CCC 27.12.900(definitions); CCC  
24 27.12.840(2)(a); and/or CCC 27.12.600 to CCC 27.12.615?

25 Issue No. 6: Economic Development/Maintain and Enhance Natural Resources Industries/  
26 Designate, Make Adequate Provisions Mineral Resource Lands/Allow Mining.

27 Are one or more of following Comprehensive Plan Provisions and/or Development  
28 Regulations readopted by Resolution No. 82 inconsistent with the GMA, RCW  
29 36.70A.020 (5)(8) (economic development/ enhance and maintain natural resource  
30 based industries), as implemented by RCW 36.70A.040(3)(b); RCW 36.70A.050(3);  
31 RCW 36.70A.060(1)(a), RCW 36.70A.131(1) and RCW 36.70A.170(1)(c); WAC 365-  
32 190-040(3); WAC 365-190-070(3)(a); WAC 365-190-610(2)(b)(ii)(B)(C): CCC  
31.02.140, Goal 12 (according commercial forestry a primary use over mining); CCC  
31.01.200 (no specific reference to or inclusion of mineral resource lands in the  
stated policy as required by the GMA); CCC 33.07. 020(1) and CCC  
31.02.140 Forest land goals (12) ("The primary land use within designated

1 commercial forest land shall be commercial forestry...other resource industries such  
2 as extraction and agriculture shall be permitted within a designated forest resource  
3 area when managed to be compatible with forest management.)” (language is  
4 inconsistent with the GMA “adequate provision” for mineral extraction and to maintain  
5 and enhance resource industries requirements.); CCC 31.02.090 (co-designation of  
6 forest and mineral lands); CCC 27.10.070; CCC 27.12.025(6); CCC 27.12.050(2);  
7 CCC 27.12.025(2) (Table 1); CCC 27.12.400 to CCC 27.12.425; CCC 27.12.740;  
8 CCC 27.12.740(2)(a)(b); CCC 27.12. 900 (Definition of “Major New Development;”);  
9 CCC 27.12.740(RUE); CCC 27.12.215(1) (Table 5); CCC 27.12.315(1) (Table 6);  
10 CCC 27.12.730; CCC 27.12.710; CCC 27.12.715; CCC 27.12.900 (definitions); CCC  
11 27.12.835 and 840(2)(a); CCC 27.12.600 to CCC 27.12.615; and/or CCC  
12 33.07.020(1); and CCC 31.02.140(12)?

13 Issue No. 7: Internal Inconsistency Within Comprehensive Plan.

14 Does Resolution No. 82 fail to comply RCW 36.70A.070 and WAC 365-196-500(1)  
15 because internal inconsistencies within the County’s Comprehensive Plan were not  
16 resolved in the Update; specifically: CCC 31.02.910 Generalized land use maps  
17 inconsistent with other maps including subarea maps (CCC Chapters 31.03, 31.04,  
18 31.05, 31.06 and 31.07); Clallam County Mineral Overlay Map is not consistent with  
19 CCC 31.02.150(2)(c); CCC 33.07. 020(1) and CCC 31.02.150(2)(b); Mineral Land  
20 goals inconsistent with CCC 31.02.140 Forest land goals (12) (inconsistent as to  
21 outright permitted resource uses and primacy of forest use); CCC 31.02.145 not  
22 consistent with CCC 31.02.150, setting a mandatory duty to consider mining once  
23 established as a preferred land use worthy of protection and/or CCC 31.02.620  
24 (Economic Development Goals 1, 5, and 6 and Policies 4 and 10) not consistent with  
25 other Comprehensive Plan provisions set out above?

26 Issue No. 8: Inconsistency of Development Regulations with Comprehensive Plan.

27 Does Resolution No. 82 fail to comply with RCW 36.70A. 070 and/or RCW  
28 36.70A.040(4), and/or CCC 31.02.140(9), CCC 31.02.150((2)(b)), CCC  
29 31.02.150(2)(f) CCC 31.01.400 and CCC 31.02.620 (Economic Development Goals  
30 1, 5, and 6 and Policies 4 and 10) because inconsistencies between the development  
31 regulations and the comprehensive plan were not resolved in the Update; specifically:  
32 CCC 27.10.070; CCC 27.12.025(6); CCC 27.12.050(2); CCC 27.12.025(2) (Table 1);  
CCC 27.12.400 to CCC 27.12.425; CCC 27.12.740; CCC 27.12.740(2)(a)(b); CCC  
27.12.900 (Definition of “Major New Development;”); CCC 27.12.740(RUE); CCC  
27.12.215(1) (Table 5); CCC 27.12.315(1) (Table 6); CCC 27.12.730; CCC  
27.12.710); CCC 27.12.715; CCC 27.12.900 (definitions); CCC 27.12.840(2)(a);  
and/or CCC 27.12.600 to CCC 27.12.615?

1 Constitutional Issues Raised and Subsequently Dismissed (renumbered):

2 Issue No. 9: Whether sections of the Comprehensive Plan, identified above, are  
3 unconstitutional under Article XI, Sec.11 of the Washington State Constitution  
4 because they are in conflict with the GMA, a general law of the State?

5 Issue No. 10: Whether sections of the Development Regulation, Washington State  
6 Constitution and/or the United States Constitution substantive due process clause  
7 because they are unduly burdensome and because less burdensome alternatives are  
8 available?

9 Issue No. 12: Whether one of more of the adopted Development Regulations identified  
10 above violate statutory and/or constitutional nexus and proportionality standards?

11 Issue No. 13: Whether sections of the Development Regulations identified above fail  
12 constitutional tests for protection of property use and development because of the  
13 absence of a particularized determination that the regulation is reasonably  
14 necessary?

15 Issue No. 14: Whether the County violated State or Federal constitutional procedural due  
16 process protections for one or more of the failures and oversights set out in Issues  
17 Nos. 6.1-6.3, above?